

REMARKS

Claims 11-16 are pending in the subject patent application. Claims 15-16, withdrawn from consideration as being drawn to a non-elected invention, and claims 17-21 have been cancelled without prejudice to the filing of a future divisional application directed to the subject thereof.

Claims 11, 12 and 14 have been amended. New dependent claims 22-28 have been added, wherein dependent claims 22-24 recite the polypeptides set forth in amended claim 11 (a), (b) and (c), respectively. New dependent claims 25-28 recite the polypeptides set forth in amended claim 12 (a), (b), (c) and (d), respectively. Dependent claim 28 further recites “*encoding* a polypeptide having” instead of “*having* ... amino acids” to correct a typographical error; this amended recitation is supported by the originally filed specification *inter alia* at page 4, lines 29-32.

No new matter has been added by these amendments.

Rejection under 35 U.S.C. § 102 (e)

Claims 11-14 are rejected under 35 U.S.C. § 102 (e) as being anticipated by Gurney et al. (U.S. Patent 6,825,023 B1 [hereinafter “Gurney”]).

Applicants respectfully traverse the examiner’s rejection and maintain that pending claims 11-14, as amended, and new dependent claims 22-28 are not anticipated by Gurney.

Initially, applicants wish to draw the examiner’s attention to the fact that the instantly claimed polypeptide as set forth in SEQ ID NO: 4 includes a transmembrane domain. In contrast, the polypeptide claimed by Gurney in claim 1 specifically excludes such a domain by the recitation of “wherein the polypeptide lacks a transmembrane domain.” Therefore, Gurney’s polypeptide cannot, by definition, include amino acid residues 455-477, stated by Gurney to comprise the transmembrane domain of Asp2(a), *i.e.*, SEQ ID NO:4. *See* Gurney, Col. 13, lines 48-49.¹ Accordingly, Gurney does not claim a polypeptide, which is 100% identical to the polypeptide of SEQ ID NO: 4 of the instant application. Since Gurney’s claimed polypeptide lacks the required transmembrane domain of the currently claimed

¹ Please note that applicants’ transmembrane domain of SEQ ID NO: 4 spans amino acids 461-477.

invention, Gurney's claim 1 does not provide each and every element of the claim, and as such, Gurney does not anticipate the claimed polypeptides.

Applicants also respectfully note that new dependent claims 22-28 recite a polypeptide of SEQ ID NO: 4 having conservative amino acid changes, wherein said polypeptide includes the transmembrane domain. Also, the polypeptides encoded by the nucleic acid as set forth in SEQ ID NO: 1, as well as the polypeptides encoded by nucleic acid molecules encoding SEQ ID NO: 4, including the DNA vector insert in ATCC deposit No. 207159, include the transmembrane domain. For example, the polypeptide recited in dependent claim 22 has one to fifty conservative amino acid changes compared to SEQ ID NO: 4 and includes the transmembrane domain. (See Specification, page 16, lines 22-26 and page 17, line 7- page 18, line 8 wherein conservative change is defined as a substitution of a native amino acid residue with a nonnative or non-naturally occurring amino acid residue.) Accordingly, these dependent claims also require the transmembrane domain, which is explicitly excluded by Gurney's claim 1 and as such are not anticipated by Gurney, as well.

Based upon the above, applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 102 (e).

CONCLUSION

In view of the foregoing, applicants request reconsideration and withdrawal of the aforementioned rejection under 35 U.S.C. § 102 (e). It is believed that the subject application is in condition for allowance, a notice of which is earnestly solicited by applicants.

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Date: September 16, 2005